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FITZPATRICK CELLA HARPER & SCINTO			YE, LIN	
30 ROCKEFELLER PLAZA			ART UNIT	
NEW YORK, NY 10112			PAPER NUMBER	
			2615	

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/697,315

Applicant(s)

SHIRAIWA ET AL.

Examiner

Lin Ye

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-17 and 20-34 is/are pending in the application.
- 4a) Of the above claim(s) 10-16, 23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17, 20-22 and 25-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 08689054.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to amended claims 17, 20-22 and 25-34 filed on 10/25/05 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

2. Claim 34 objected to because of the following informalities:

For claim 34, it discloses "the **product** according to claim 29...". However, the claim 29 is only an image processing method. The claim 34 should be changed to -- the product according to claim 33 -- .

Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 25, 26, 31-33 are rejected under 35 U.S.C. 101 because:

For claims 25 and 26, the claimed invention is directed to non-statutory subject matter. Data structures not claimed as embodied in **computer-readable media** are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See. e.g., Warmerdam, 33 F. 3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structure and other claimed

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aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

The examiner suggests changing the claim to read -- A computer program product **stored on a computer readable medium**, when **executed by a computer**, the computer program to implement an image processing method, the method comprising the steps of: ... --.

For art examination purpose, these claims will be interpreted as they are best understood.

5. Since a 35 U.S.C. 101 rejection is being first time applied against claims 25, 26, 31-33, this action is not made final.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 17, 20 and 22 and 25-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Gu U.S. Patent 5,874,988.

Referring to claim 17, the Gu reference discloses in Figures 1 and 4-5, an image processing apparatus (system 10 as shown in Figure 1) comprising: a first input unit (image capture device 180), arranged to input a sensing image (a target image); an indicating unit (a point device such as a mouse 106 and a keyboard 107, see Col. 7, lines 14-16) manipulated by a user, arranged to indicate an arbitrary position within the input sensing image displayed on a screen (indicate a spot or predetermined region 105 within the target image displayed on a screen of display 104, see Col. 9, lines 27-30); a determining unit (image analyzer 160), arranged to determine an image processing parameter to convert color information of a position within the input sensing image indicated by said indicating unit into arbitrary color information (e.g., analyze the selected image and calculate a color frequency distribution of the image, see Col. 9, lines 49-62); a second input unit (400), arranged to input color information, which has an image data format (reference image) and is used in the determination of the image processing parameter by said determining unit (e.g., the color characteristics are determined by the difference between a reference image and selected target image by the determining unit 160, see Col. 12, lines 30-43), a processing unit (image processing system 120, see Col. 25, lines 27), arranged to convert the color information of the indicated position within the input sensing image into the arbitrary color information (a particular color region) by performing color processing on the input image using the image processing parameter (See Col. 15, lines 30-63).

Referring to claim 20, the Gu reference discloses wherein said processing unit (120) adjusts color balance (a color correction) of the image-sensing signal by using the image processing parameter (See Col. 10, lines 16-26).

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Referring to claim 22, the Gu reference discloses all subject matter as discussed with respected to same comment as with claim 17.

Referring to claim 25, the Gu reference discloses all subject matter as discussed with respected to same comment as with claim 17, and the Gu reference discloses a computer program product stored on a computer readable medium, when executed by a computer, the computer program to implement an image processing method (See Col. 10, lines 44-62).

Referring to claim 26, the Gu reference discloses all subject matter as discussed with respected to same comment as with claim 17, and the Gu reference discloses a computer program product stored on a computer readable medium, when executed by a computer, the computer program to implement an image processing method (See Col. 10, lines 44-62).

Referring to claim 27, the Gu reference discloses wherein said first input unit (image capture device 180) inputs the sensing image output from an image sending unit (an image source 125 as the image sending unit can be a television camera, see Col. 7, lines 18-25).

Referring to claim 28, the Gu reference discloses wherein said first input unit displays the input sensing image on a monitor (104), and the user indicates the arbitrary position (105) within the input sensing image displayed on the screen of the monitor as shown in Figure 1.

Referring to claim 29, the Gu reference discloses all subject matter as discussed with respected to same comment as with claim 27.

Referring to claim 30, the Gu reference discloses all subject matter as discussed with respected to same comment as with claim 28.

Referring to claim 31, the Gu reference discloses all subject matter as discussed with respected to same comment as with claim 27.

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Referring to claim 32, the Gu reference discloses all subject matter as discussed with respected to same comment as with claim 28.

Referring to claim 33, the Gu reference discloses all subject matter as discussed with respected to same comment as with claim 27.

Referring to claim 34, the Gu reference discloses all subject matter as discussed with respected to same comment as with claim 28.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gu U.S. Patent 5,874,988 in view of Aihara et al. U.S Patent 5, 729,363.

Referring to claim 21, the Gu reference discloses all subject matter as discussed in parent claim 17, except that reference does not explicitly show when second input unit does not input the reproduced image for generating desired imaging parameters, the processor also performs white balance processing.

The Aihara reference discloses a image processing apparatus comprising: a CCD image sensor (4) and image processing circuit (7) for white balance, flare and shading correction processing (See Col. 8, lines 17-21); and the imaging data may be processed basis of a

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reference imaging parameters wherein there are no desired imaging parameter or wherein there are imaging parameters close to the desired imaging parameters in the imaging data (See Col. 19, lines 1-6). The Aihara reference is evidence that one of ordinary skill in the art at the time to see more advantages for the imaging processing system has more flexible options to processing the image data such white balance correction either using the image parameter obtain from the image data, or an arbitrary reproduced image data as the reference imaging data when no desired imaging parameter in the image data. For that reason, it would have been obvious one having ordinary skill in the art at the time of the invention was made to modify the image processing apparatus of Gu ('988) by providing the processing performs white balance processing when said second input unit does not input the reproduced image as taught by Aihara ('363)

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lin Ye whose telephone number is (571) 272-7372. The examiner can normally be reached on Mon-Fri 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David L. Ometz can be reached on (571) 272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Lin Ye', with a stylized, flowing script.

Lin Ye
Examiner
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December 27, 2005